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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

10 Cr. 863 (AKH)

6 JOE FERNANDEZ,

7 Defendant.
8 -----x

9 New York, N.Y.
10 February 19, 2013
11 10:00 a.m.

12 Before:

13 HON. ALVIN K. HELLERSTEIN,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

19 TODD BLANCHE

20 RUSSELL CAPONE

21 JOHN P. CRONAN

22 Assistant United States Attorneys

23 MURRAY RICHMAN

24 BRIAN PAKETT

25 Attorneys for Defendant

26 ALSO PRESENT: SHAWN MacDONALD, DEA
27 VANESSA QUINONES, Paralegal
28 DON TAYLOR, Paralegal

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1 (Trial commenced)

2 THE COURT: Objection by the government.

3 MR. BLANCHE: Your Honor, Todd Blanche, Russell
4 Capone, John Cronan for the government, and we are also joined
5 at counsel table by DEA Special Agent Sean MacDonald and
6 paralegal Vanessa Quinones.

7 THE COURT: Give me a list of everyone at the table.

8 MR. BLANCHE: Yes, your Honor.

9 THE COURT: Murray Richman and Brian Pakett.

10 MR. RICHMAN: Good morning, your Honor.

11 THE COURT: To your right, Mr. Pakett?

12 MR. PAKETT: Mr. Fernandez. And to Mr. Fernandez's
13 right is Don Taylor, our paralegal.

14 THE COURT: Go ahead, Mr. Blanche.

15 MR. BLANCHE: Your Honor, just a brief issue, since we
16 have some time before the jury comes up, the panel comes up.

17 Our second cooperating witness is Patrick Darge. You
18 may recall Mr. Darge had another case before your Honor, by
19 happenstance, several years ago, and he was a cooperating
20 witness for the government several years ago.

21 And as part of this 3500 material the government
22 produced turned and turned over his prior sentencing proceeding
23 before your Honor. We asked defense counsel whether they
24 intended to elicit any statements made during that sentencing
25 by people other than the Patrick Darge, the witness. That

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1 would include statements by the Assistant U.S. Attorney, by
2 your Honor, and by Mr. Darge's attorney.

3 The government believes any statements by your Honor
4 or by the Assistant U.S. Attorney or by his attorney is
5 inadmissible hearsay, and we are not aware of any exceptions.
6 Certainly, they can elicit from Mr. Darge what he said at the
7 sentencing but not, for example, what your Honor said at the
8 sentencing. It's a statement that was out of court and it's
9 not being stated in this trial.

10 THE COURT: It's in court. I catch your point.

11 Mr. Richman.

12 MR. BLANCHE: It's in this courtroom, but it's not
13 being stated during this proceeding. I am not even sure --

14 THE COURT: I got you, Mr. Blanche. I got the point.

15 Mr. Richman.

16 MR. RICHMAN: Your Honor, would that not show Mr.
17 Darge's state of mind? He stood before your Honor being
18 sentenced.

19 THE COURT: I need to see the entire set of remarks
20 that need to be discussed.

21 MR. RICHMAN: I have them right here.

22 THE COURT: Hand them up, Mr. Richman.

23 MR. RICHMAN: He is before you being sentenced --

24 THE COURT: I would rather see remarks than hear the
25 rhetoric.

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1 MR. RICHMAN: The rhetoric is good, though.

2 THE COURT: What do you want to introduce, Mr.
3 Richman?

4 MR. RICHMAN: Your Honor, the point I'm making is, Mr.
5 Darge is so confident in his ability --

6 THE COURT: Mr. Richman, please. What line, what
7 page?

8 MR. RICHMAN: Right there, your Honor, just where he
9 folded.

10 THE COURT: Where the fold is.

11 MR. RICHMAN: Where the U.S. Attorney speaks.

12 THE COURT: We are turning to page 27 of the
13 transcript of March 8, 2004. And what on that page?

14 MR. RICHMAN: The portion thereof where Mr. Miller,
15 the U.S. Attorney, speaks on behalf of Mr. Darge, saying how
16 good an informant and how good he was doing and how truthful
17 and how exceptional he was as a human being. And your Honor
18 should reduce the sentence you imposed.

19 THE COURT: How do you want to use this?

20 MR. RICHMAN: I want to show that Mr. Darge was so
21 confident in manipulating the system that he was able to do so
22 again after misleading the Court at that time, failing to tell
23 the truth, failing to come forth pursuant to the agreement,
24 getting the benefit of the agreement, and going on living his
25 life in complete --

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1 THE COURT: At the present moment I can't see the
2 relevance, so the government's objection is granted. I will
3 review this in the context when, again, if ever you want to use
4 it.

5 MR. RICHMAN: Thank you, your Honor.

6 THE COURT: I'll give you back the transcript.

7 You want to raise another question?

8 MR. BLANCHE: No, your Honor. The government doesn't
9 have anything that needs to be raised.

10 THE COURT: Are all persons attending fan clubs of
11 either the government or the defense?

12 MR. BLANCHE: They are not from the government, your
13 Honor.

14 THE COURT: Can I see counsel at the side bar.

15 (At the side bar)

16 THE COURT: How many jurors are we going to get?

17 THE DEPUTY CLERK: Probably around 60. I told them
18 they have to move already.

19 THE COURT: Which is a very delicate operation in
20 terms of defendant's rights.

21 MR. RICHMAN: Your Honor, most respectfully, with
22 relation to my client's presence at the bar, I want to waive
23 his presence up here and I will clear it with him.

24 THE COURT: Thank you. I was going to ask that next.

25 MR. RICHMAN: I can speak with the people.

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1 THE COURT: Before you wave, you can talk to him. I
2 don't need his declaration. Let him know, if he wishes to come
3 up, he can, but the marshals will come with him. Let me know
4 after discussion with him it's his decision not to come up.

5 MR. RICHMAN: I know the difficulty it places you in
6 here. Of course, the person is out of the courtroom during the
7 proceedings. Is there no way we can push them off to the side?

8 THE DEPUTY CLERK: I told them we have to stand in the
9 corner until we seat the jury in the jury box.

10 THE COURT: There is a lots of people. Can we reduce
11 the number, Mr. Richman?

12 MR. PAKETT: I have advised them there was a
13 probability that they would not be able to be in court today.

14 THE COURT: I am not worried about your advice. I'm
15 worried about the defendant's rights. He's entitled to a fair
16 amount of family support, but he doesn't need that number.
17 It's not comfortable for the people to be standing that long
18 and it's not comfortable for the jurors to see that happen.

19 MR. RICHMAN: I am going to have a portion wait
20 outside until we have a jury and then they will come back in.
21 I will work that out.

22 THE COURT: The jury is going to be up within the next
23 10, 15 minutes.

24 MR. RICHMAN: I'll talk to them right away.

25 THE COURT: Thank you, Mr. Richman. If there is a

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1 problem, let me know.

2 THE DEPUTY CLERK: Is his parents here? Maybe they
3 can stay. I have three chairs.

4 MR. RICHMAN: There are other people there that have
5 nothing to do --

6 THE COURT: Work it out with Brigitte.

7 MR. BLANCHE: Just to be clear, though, under the very
8 recent Second Circuit case, as long as they understand that if
9 they want to be here or if your client wants to be here --

10 THE COURT: Mr. Blanche, leave it to me.

11 MR. RICHMAN: I was aware of what the Court was
12 telling me. I understood that.

13 THE COURT: I don't give any unwritten messages or
14 unspoken messages, Mr. Richman. Mr. Richman and I understand
15 each other perfectly. Thank you.

16 (In open court)

17 THE COURT: Mr. Fernandez, one of the things we said
18 at the side bar is you have a right to be present at every
19 stage of the proceedings. And from time to time we may have
20 side bars. You have a right to come up at the side bars. But
21 you also have a right to decide not to. One of the problems
22 is, that if you come up, the marshals will come up. And you
23 have to decide what you want. Discuss it with Mr. Richman and
24 Mr. Richman will then tell me what you want.

25 MR. RICHMAN: My client has informed me that he will

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1 waive his right to approach the bench.

2 THE COURT: Thank you, Mr. Richman. Thank you,
3 Mr. Fernandez.

4 MR. RICHMAN: May I use this time briefly for a small
5 issue?

6 THE COURT: Yes, sure.

7 MR. RICHMAN: We were served by the prosecution 3500
8 material today, a diagram of the hallway in which the homicides
9 occurred. And as part of that exhibit we were given a fact
10 that latent fingerprints were removed from the scene, the first
11 knowledge that we had obtained of that information.

12 I just want to be assured, since it comes literally on
13 the eve of trial, that there is no attempt of linking these
14 latent prints to my client and if we have any information as to
15 whom they might belong.

16 MR. BLANCHE: The government can give that assurance,
17 meaning, we have no information that the prints are linked to
18 Mr. Fernandez or to anybody involved in this case. As I told
19 Mr. Richman a few minutes ago, we are getting whatever results
20 came back from the fingerprint lab, but we've spoken with
21 people during our investigation and we know -- this is the
22 lobby of an apartment building. Based on we know so far, they
23 are not connected to anybody in this case. I don't believe
24 that opinion is going to change, and certainly we have no
25 information to suggest that the prints will come back to

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1 Mr. Fernandez.

2 THE COURT: Thank you.

3 MR. RICHMAN: Sufficient.

4 (Continued on next page)

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Trial

1 AFTERNOON SESSION

2 2:45 p.m.

3 THE COURT: All rise. Be seated.

4 MR. BLANCHE: After opening statements, we have the
5 first responder, NYPD officer. He is not too long, about half
6 hour, maybe a little bit longer. And then we have on our first
7 cooperating witness, have him ready to go.8 I don't know if you want to start a cooperating
9 witness at the end of the day today, or just do the first
10 witness.

11 THE COURT: Why? Why not? Go to 5:00.

12 MR. BLANCHE: Yes, your Honor.

13 THE DEPUTY CLERK: All rise.

14 THE COURT: Be seated, everyone.

15 Members of the jury. I summarized this morning the
16 indictment. In the indictment are the accusations which the
17 government has to prove beyond a reasonable doubt.18 The indictment itself is not evidence. Nevertheless,
19 since it's the formal accusation, you should know it. And I
20 read it to you:21 On or about February 22, 2000, in the Southern
22 District of New York and elsewhere, the Southern District of
23 New York is Bronx County, New York County, counties to the
24 north, and some across the river.

25 On or about February 22, 2000 in the Southern District

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1 and elsewhere, Joe Fernandez, the defendant, and others known
2 and unknown, willfully and knowingly did combine, conspire,
3 confederate, and agree, together and with each other, to travel
4 in and cause another to travel in, interstate and foreign
5 commerce. And to use, and cause another to use, the mail of
6 any facility of interstate and foreign commerce with intent
7 that a murder be committed in violation of the laws of any
8 state, and the United States, as consideration for the receipt
9 of, and as consideration for, a promise and agreement to pay
10 anything of pecuniary value.

11 To wit, Fernandez agreed with others to kill two
12 persons, later identified as Ildefonso Vivero Flores and Arturo
13 Cuellar in exchange for currency and other things of pecuniary
14 value. And in the course thereof conspirators did communicate
15 through a facility of interstate commerce which resulted in the
16 murder of Flores and Cuellar in the vicinity of 3235 Parkside
17 Place, Bronx, New York. This is the first count. These are
18 allegations, they are not facts. They have to be proved. You
19 do not accept this as evidence.

20 Count two. On or about February 22, 2000, in the
21 Southern District of New York, Joe Fernandez, the defendant,
22 willfully and knowingly, during and in relation to, a crime of
23 violence for which he may be prosecuted in a court of the
24 United States, namely a conspiracy to commit murder for hire,
25 did use and carry a firearm and, in furtherance of such crime,

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1 did possess a firearm. And did aid and abet the use, carrying,
2 and possession of a firearm. And in the course of that crime,
3 did cause the death of two people through the use of a firearm,
4 which killing is murder as defined as Title 18 United States
5 Code Section 111(a). To wit, Fernandez caused the death of
6 Ildefonso Vivero Flores and Flores Cuellar by discharging a
7 firearm at Flores and Cuellar, and aiding and abetting the
8 discharge of a firearm in vicinity of 3235 Parkside Place,
9 Bronx, New York.

10 Again, these are accusations or allegations, they are
11 not evidence. And in order to constitute evidence, proof must
12 be presented, and that proof in order to convict must be beyond
13 a reasonable doubt.

14 Now, let me give you some preliminary instructions.

15 I have mentioned evidence. So what is evidence?
16 There are two kinds, direct evidence and circumstantial
17 evidence. Neither has magical powers. Neither is more or less
18 persuasive than the other. You decide, from all of the
19 evidence in the case, or the absence of evidence in the case,
20 if the government, on the basis of all of the evidence or the
21 lack of evidence, has proved the allegations I have just read
22 beyond a reasonable doubt.

23 Direct evidence is testimony by a witness about what
24 that witness personally saw or heard or did. Or evidence in a
25 document of what happened.

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1 Circumstantial evidence is evidence that can
2 reasonably be inferred from direct evidence.

3 You may consider both direct and circumstantial
4 evidence in deciding the case. It's up to you to decide how
5 much weight, if any, to give to any particular item of
6 evidence. You are the sole judges of the facts. You determine
7 which in the witnesses you believe, what portion of the
8 testimony you accept, what appears to be credible from the
9 matters they present, what is reasonably to be inferred from
10 other evidence, and so on.

11 That's the evidence. The attorneys may or may not
12 object to various items of evidence that come in. Their
13 objections are not evidence. The attorneys will say one word,
14 "objection." If I need more explanation, I'll ask for it.
15 Otherwise, I want no explanation for making an objection.

16 The attorneys will rise, make the objection, and I
17 will rule on it.

18 (Continued on next page)

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1 THE COURT: Objections, ladies and gentlemen, are not
2 evidence. Whether an attorney wins or loses objections does
3 not have any meaning for you at all. It's my business, not
4 yours. The evidence is what the witnesses say in response to
5 questions that may be put to them and what the documents say
6 that are in evidence and what stipulations may say in evidence.
7 Objections are not evidence. Questions that are objected to
8 are not in evidence. The only evidence is what the witnesses
9 say in response to questions.

10 The attorneys may ask questions. I sometimes will ask
11 questions. My questions have no more meaning and no less
12 meaning than if the attorneys asked them themselves. I ask
13 questions if I feel that some aspect of the record needs to be
14 illuminated, and you can suggest questions as well.

15 There are certain principles that you need to observe.
16 First, come on time. It's very important. We cannot start
17 unless you are all here and ready to begin. So everybody must
18 pay attention to starting times and be here.

19 Second, don't talk to each other about the case.
20 Don't talk to anyone else about the case. As I said before,
21 talking about the case tends to close your mind. You must keep
22 a clear and open mind.

23 The lawyers, the witnesses, the parties, they have all
24 been instructed not to talk to you. They are not to say good
25 morning to you or good afternoon or how are you. They are not

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1 to observe the pleasantries of normal conversation. So when
2 they don't answer you or don't address you if they see you,
3 it's not their fault. They are paying attention to my
4 instructions.

5 Similarly, don't hang around the lawyers. If they are
6 in an elevator and you get in, get out. If you come early,
7 assemble in the jury room and wait there. Don't mingle around
8 the corridors. We don't want contact between the lawyers or
9 the parties and the jury. If there is anything about this case
10 in the newspapers, don't read about it. If you hear it on TV
11 or the radio, don't listen. What's important is the evidence
12 that comes in and only that. You can't be affected by stray
13 comments from others. Don't allow you to be that way. As I
14 said before, don't research or investigate the case yourself.
15 The lawyers will present you the information that you need to
16 make a decision.

17 We are going to start with the openings. The
18 government will start first and tell you what it is they
19 present in the case. This is their chance to tie all their
20 evidence together and give you context and sequence, and that's
21 the purpose of the opening. It's not to issue a persuasive
22 statement. The defendant may point out various things about
23 the government's proof or the lack of proof. It's not also not
24 intended as a summation. It's to give you context and what to
25 look for. Then the evidence will come in by the witnesses and

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1 the documents. At the end of that, the lawyers will sum up the
2 case to you. Finally, I'll give you the instructions. Only
3 then should you discuss the case and only then in the jury room
4 deliberating with one another.

5 We will go today until 4:30 p.m. and break and we will
6 start tomorrow promptly at 10 a.m. Those of you who drive,
7 those of you who use public transportation, allow for delays.
8 Please try to come here on time. Ms. Jones has your number if
9 she needs to reach you. You keep her number if you need to
10 reach her. If you're held up in some unplanned way, let
11 Ms. Jones know about it.

12 We have distributed notepads and pens. Those of you
13 who would like to take notes, take them. Sometimes they help
14 memory, sometimes they help you pay attention. They are not to
15 be used to persuade one another. There is a record for the
16 case. Later on, when you need to consult the record, you can
17 have the record reread. Your notes are not proof for anyone
18 else. They are not to help anyone else recall what happened.
19 They are only for your private use and only during the case.
20 Ms. Jones will take up the notes during the lunch break, keep
21 them for you, she will take them at the end of the day and keep
22 them for you. At the end of the case we take up the notes and
23 we destroy them. They are only aids in recollection for those
24 who take them. And don't feel compelled to take them. Some
25 people prefer not to take notes. Some people feel they can pay

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1 better attention without notes. Your decision to take notes or
2 not is your personal decision.

3 I think that's all I have. And now we will turn this
4 over to the lawyers, the government first. Who is going to
5 speak?

6 MR. CAPONE: I am, your Honor.

7 THE COURT: What Mr. Capone says to you is not
8 evidence. It's his construction of the case to help you
9 understand the evidence as it comes in.

10 MR. CAPONE: On the afternoon of February 22, 2000,
11 two men waited in the lobby of an apartment building in the
12 Bronx. They paced around anxiously. The loaded guns they
13 concealed in their clothes were invisible to anyone who would
14 have passed them by in that moment. You see, these two men
15 were hired hitmen and their mission was to kill two other men
16 in connection with a massive cocaine deal gone wrong.

17 A short time later the victims walked into the lobby
18 of the building. They thought they were headed to an apartment
19 where they were about to pick up millions of dollars in drug
20 proceeds. They waited for the elevator to come, but it never
21 did. Right at that moment the two hired hitmen emerged from
22 the shadows, drew their guns, and fired at close range. They
23 got off many shots, shots that left the victims on the floor,
24 slumped over each other, bleeding to death. The hired killers
25 made off in a getaway car and soon after that were paid their

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Opening - Mr. Capone

1 bounty.

2 One of those hired killers is that man, Joe Fernandez,
3 the defendant. That is why we are here today, ladies and
4 gentlemen, because Joe Fernandez is a murderer who took the
5 lives of two men in connection with a large drug deal and was
6 paid \$40,000 to do it.

7 For that he is charged with two crimes. First, with
8 participating in a murder for hire conspiracy and, second, with
9 using a firearm during a crime of violence with death
10 resulting.

11 Now, as Judge Hellerstein just told you, this is the
12 government's opportunity to explain to you what it expects the
13 evidence will show at this trial and also how it will prove the
14 defendant's guilt of both counts.

15 So what will the evidence show? The evidence will
16 show that in the late 1990s, a man named Jeffrey Minaya was an
17 up-and-coming drug dealer in New York City with a crew of
18 people who worked for him. Through his contacts, Minaya began
19 working with a Mexican drug organization that distributed large
20 quantities of cocaine from Mexico to the United States.

21 In February of 2000, that organization sent a little
22 more than 250 kilograms of cocaine to New York City for Minaya
23 to distribute. The way the deal was supposed to work was that
24 Minaya and his crew would sell the cocaine pretty quickly, and
25 at that point they would pay the Mexican organization back what

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Opening - Mr. Capone

1 they owed for the cocaine.

2 Now, the price for the more than 250 kilograms of
3 cocaine was over \$6 million. That is, obviously, a lot of
4 money. And so the Mexican organization sent two men, Arturo
5 Cuellar and Ildefonso Vivero-Flores, the eventual victims, to
6 New York to watch over Jeffrey Minaya and his crew and to make
7 sure they paid the money.

8 Over the course of nearly two weeks, leading up to the
9 murders, Cuellar and Vivero-Flores stayed in close and almost
10 daily contact with Minaya and members of his crew. But at some
11 point along the way the planned changed. You see, drug dealers
12 are in the business of making money and Minaya and his crew had
13 come into millions of dollars, much of which they were supposed
14 to pay back to those two men. They decided that instead of
15 paying the money back they were going to keep it and have the
16 two men killed. They felt they could get away with it because
17 aside from those two men, almost no one in the Mexican
18 organization knew who Minaya or his crew were. They could
19 always leave town immediately after the murders and lay low
20 with their new found millions.

21 So in the days leading up to the murders, Minaya and
22 his crew, including a man who went by the nickname Gordo, began
23 planning how to carry them out. Minaya tasked Gordo with
24 hiring a hitman and Gordo turned to his cousin, a man named
25 Patrick Darge.

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Opening - Mr. Capone

1 By the way, ladies and gentlemen, I have already used
2 a lot of names this morning. For now don't worry about
3 remembering all those names. By the end of the trial you are
4 going to know everything you need to know about the various men
5 who participated in this crime.

6 Now, Gordo turned to Patrick Darge because Darge was
7 family with Gordo. He could be trusted. He was a drug dealer
8 and he was violent enough to kill, if necessary. And so the
9 night before the murders, Gordo and a couple of other members
10 of the crew approached Darge outside of his home. They told
11 him about the need to kill the two men and they settled on a
12 \$180,000 price tag for Darge to do it. The plan they devised
13 was for one of the crew members to drive the two men to an
14 apartment building the next day where, as I mentioned, they
15 thought they were finally going to be paid their drug money.
16 Instead, Patrick Darge would kill them upon arrival in the
17 lobby.

18 But he couldn't do it alone. As he went over the plan
19 that night, Patrick Darge decided that he would need a getaway
20 driver and he would need a backup shooter. And so he asked his
21 friend, Luis Rivera to be the getaway driver and he asked his
22 cousin, the defendant, Joe Fernandez, to be his backup shooter.

23 He went to the defendant's home, to his apartment
24 complex in the Bronx and met with him that night. He told him
25 that he had been hired to kill two men, and he told them that

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Opening - Mr. Capone

1 he needed backup. He needed somebody with a gun in case things
2 went wrong. He offered the defendant a cut of his fee,
3 \$40,000, to do it. The defendant heard Patrick Darge out and
4 readily agreed to the plan.

5 The next day the getaway driver picked the defendant
6 and Patrick Darge up and drove them to the apartment building
7 where the murders were to take place. They went inside the
8 building, they scoped out the scene, they loitered in the lobby
9 until they received word that the moment had finally come. The
10 victims were on their way in. And so the defendant and Patrick
11 Darge stationed themselves in a mailroom area just off the side
12 of the lobby. They remained motionless until they saw three
13 men, the crew member and the two victims, enter the lobby. The
14 crew member passed the elevator button and stepped to the side,
15 leaving the two victims in front of the elevator.

16 Right then, Patrick Darge and the defendant rushed out
17 from the mailroom area. Darge fired the first shot, a bullet
18 that went to the head of one of the victims, one who was
19 looking the other way and never saw it coming. But when he
20 went to fire the second shot, his gun jammed. He couldn't get
21 it off. And so he immediately bolted from the building.

22 The defendant, hired to handle the situation if
23 anything went wrong, then finished the job. He fired shot
24 after shot after shot into the heads, necks, and torsos of
25 Cuellar and Vivero-Flores, leaving their mangled bodies laying

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Opening - Mr. Capone

1 on the lobby floor before he, too, fled the scene.

2 That is what the evidence in this case will show,
3 ladies and gentlemen. Now I'd like to talk for a few moments
4 about how the government will prove the defendant's guilt.

5 First, you will hear from law enforcement officers who
6 responded to the crime scene and who investigated the murder.

7 You'll see evidence from the crime scene, bullets and shell
8 casings, and you will see photographs of the murder scene. You
9 will hear from a doctor who works for the medical examiner's
10 office. She will tell you about the autopsies that she
11 performed on Cuellar and Vivero-Flores and the conclusions she
12 reached regarding their death.

13 You will see other physical evidence, like documents
14 from the crime scene and documents from the victim and
15 documents from the hotel where the victims were staying. In
16 addition, you are going to get an insider's view of Jeffrey
17 Minaya's drug organization and how it planned the murders. You
18 will hear from witnesses who were members of the organization
19 and who helped to carry out the murders.

20 You will hear directly from Jeffrey Minaya. He will
21 tell you about how he came to make the connection with this
22 Mexican organization, about the 250 plus kilograms of cocaine
23 that he received in February of 2000, about the decision to
24 kill the two men that had come to collect the money for that
25 cocaine, and about how he and his crew hired Patrick Darge to

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Opening - Mr. Capone

1 do it.

2 And you will hear from Patrick Darge himself, the
3 other shooter that night. Patrick Darge will tell you about
4 how he was approached and how the plan was formed, but, most of
5 all, Patrick Darge will tell you about how he and his cousin,
6 the defendant, killed two men in February of 2000. He will
7 tell you about how he approached the defendant and told him
8 about the plan. He will tell you about the money he offered
9 the defendant. He will tell you that he asked the defendant to
10 bring his own gun and that the defendant agreed to bring his
11 own gun. You will learn that the defendant was only going to
12 have to shoot if it became necessary. And Patrick Darge will
13 tell you about when his own gun jammed, as he fled that lobby,
14 he heard the defendant firing the series of shots that finished
15 the murder they had been hired to do.

16 Ladies and gentlemen, there were two shooters that
17 night, Patrick Darge will tell you that, but you will also
18 learn about that from other witnesses that you will hear from
19 during this trial and you will learn about that from the police
20 investigation. The ballistic evidence will show that on the
21 lobby floor and in the victims' bodies were one bullet that
22 came from a certain gun and a series of bullets that came from
23 another gun.

24 Now, you will hear about the murders not only from the
25 words of Patrick Darge, you will also hear about the

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Opening - Mr. Capone

1 defendant's own words, his own admission to participating in
2 the murders from another family member. Alan Darge is
3 Patrick's brother and so he, too, is family with the defendant.
4 Alan Darge was uninvolved in the murders, but, he, too, is a
5 criminal and he is in jail for selling drugs.

6 Alan Darge will tell you that on the eve of the
7 defendant's arrest, after law enforcement had come looking for
8 the defendant, the defendant turned to Alan for advice. Alan
9 suggested to the defendant that he should get out of town, and
10 he even gave him some money and a cell phone. And they
11 speculated about who could have told the government about the
12 defendant's involvement. Was the defendant sure it was Patrick
13 Darge? And Alan told you that he asked the defendant about
14 what happened that night, and the defendant told him about how
15 he and Patrick had shot and killed two men.

16 I would like to talk for a moment about Patrick and
17 Alan Darge and Jeffrey Minaya and some of the other witnesses
18 you will hear from during this trial. There is no two ways
19 about it, these men are criminals. They sold drugs, they
20 participated in other crimes you'll hear about, and some of
21 them participated in the murders. Now, they are also
22 cooperating with the government. They are trying to help
23 themselves eventually receive a reduced sentence.

24 Patrick Darge, I expect you will learn, cooperated
25 with the government in 2002, when he was arrested for selling

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1 heroin. At that time he was supposed to tell the government
2 about all of his past crimes, but he didn't admit to the
3 murders. I expect you will learn that and you will learn that
4 he served a couple of years in jail as a result of his
5 cooperation. You will learn that he was released, that he led
6 his life, he became a deacon and then a pastor at a church.

7 But by 2010, the government had caught up with him and
8 found out about his role in the murders and he was arrested
9 again, and he began cooperating with the government again, as I
10 mentioned, as are many of the other witnesses that you will
11 hear from during this trial.

12 But I ask you to keep in mind that the question is not
13 whether you like Patrick Darge or Jeffrey Minaya or any of the
14 other witnesses you hear from during the trial. The question
15 is whether they are telling you the truth. Of course, the
16 government would like to prove its cases exclusively with
17 law-abiding citizens, but common sense tells you that
18 oftentimes the main witnesses to a crime are those who
19 participated in it.

20 And so I ask you to listen carefully to the testimony
21 of these men. Listen carefully to Jeffrey Minaya when he tells
22 you about the plan to kill Cuellar and Vivero-Flores. Listen
23 carefully to Patrick Darge when he tells you how he and the
24 defendant carried out that plan. And listen carefully to Alan
25 Darge when he tells you about how the defendant admitted to him

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1 his role in those murders. I invite you to scrutinize their
2 testimony and see if it fits with the other evidence you will
3 see and hear during this case.

4 And I expect at the end of the trial, when you go back
5 to the jury room to deliberate, you will conclude that these
6 men are telling you the truth about the murders of Ildefonso
7 Vivero-Flores and Arturo Cuellar, and Patrick Darge is telling
8 you the truth about how he and the defendant, his family
9 member, carried out those murders.

10 Now, before that time comes and during the trial I ask
11 you to pay careful attention to the evidence as it comes in,
12 follow the judge's instructions on the law, and, most
13 importantly, to use your common sense, the same common sense
14 that you use to make decisions in your everyday lives. If you
15 do those three things, if you pay attention to the evidence, if
16 you follow the judge's instructions, and if you use your common
17 sense, the government will get a fair trial, the defendant will
18 get a fair trial, and your verdict will be fair and just and
19 the verdict the government will respectfully ask you to enter
20 at the conclusion of this trial, the verdict the evidence will
21 compel is that the defendant is guilty as charged.

22 THE COURT: Thank you, Mr. Capone.

23 Mr. Richman.

24 MR. RICHMAN: Good afternoon, ladies and gentlemen.

25 My client is charged with a very serious crime. He is

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1 charged with murder. The government concedes he was never
2 involved in narcotics transactions involved in this case at
3 all. The government concedes that his alleged entry into this
4 particular case happened on that day, February 22, when the
5 shooting allegedly occurred.

6 Let me tell you what this case is really about. It's
7 about a man who learned to manipulate, a man who learned to
8 manipulate the system, Patrick Darge. You see, Patrick Darge
9 was arrested in the year 2003 for narcotics transactions. He's
10 a very smooth and very capable young man and he sat down and he
11 made a deal with the government that he would inform on every
12 crime that he ever was involved in, and the government bought
13 the story. They bought the story and they signed an agreement
14 with him that if they caught him lying all bets were off.

15 Patrick Darge gave a story in 2003 involving his whole
16 narcotics crew and many of the people who will be testifying
17 here today. Never mentioned Mr. Fernandez, barely mentioned
18 his brother, Alan Darge, who he will be referring to as Boozer,
19 and put forth such an example of rehabilitation that they
20 reduced his sentence from a minimum of ten years to a minimum
21 of about two. He went about his life and walked away.

22 In the year 2010, he was arrested again, this church
23 deacon, this man of integrity, who had previously signed an
24 agreement with the following words: He shall truthfully and
25 completely disclose all information with respect to the

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1 activities of himself and others concerning all matters about
2 which this office inquires of him, all crimes which he has
3 committed. Any testimony that he testified about himself
4 before shall now be admitted against him.

5 You see what he didn't tell the government was that he
6 had killed someone, not here in this case, not in the year
7 2000, but a separate and complete other murder. He shot a man
8 in the eye dead. But he had learned to work the system. How
9 did he learn to work the system? Because last time he got off
10 by testifying, these other guys did it. I am really looking to
11 help you. What does he do now? I'll tell you about more
12 murders I was involved in.

13 You see, Patrick Darge is a killer and he will admit
14 being a killer. But he knows that if he involves someone else
15 it will lay it off. He will get off with a lighter sentence.
16 You see, Patrick Darge had previously fooled the DEA, he had
17 previously fooled the United States Attorney's Office, and you
18 will see the evidence of that yourself. And he also previously
19 fooled the judge. He lied. And this lie got him off. And
20 you'll see it. You can hold me to it. When you learn to lie
21 and you learn it works, you will continue lying, it will always
22 work. You know it and I know it.

23 So Patrick Darge said, fine, I can't testify against
24 the other people who are now in jail, let me bring someone else
25 in. Let me bring my cousin in. He is not involved in any of

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1 that. He is the guy who did it with me and that's the whole
2 testimony. That's what this case is all about, Patrick Darge,
3 and his brother Boozer. Boozer, who you will learn is a
4 well-known shooter because he shot people before in 1998, 1999,
5 he shot a couple of people. He is a drug dealer. But his own
6 brother, who is making \$180,000 to kill somebody, doesn't go to
7 his brother, who he doesn't testify about before, who is a
8 known shooter who has a whole bunch of guns and you will hear
9 about that, 24 guns he has, he doesn't go to his brother. He
10 goes to cousin. And you will learn that his cousin is married,
11 has children. You will learn all that. He is a working stiff.
12 But he knows he has learned the lesson.

13 Look. It's not a personality contest. If I'm overly
14 dramatic, please don't hold it against me. Listen to the
15 evidence as it comes in. Listen to the evidence and lack of
16 evidence. You know, aside from the word of Patrick Darge, and
17 he is slick, and the so-called admission to Boozer just before
18 my client is arrested, you'll have no evidence of fiber, no
19 evidence of saliva present, no evidence of any scientific
20 nature, DNA, anything, connecting my client to this wrong, not
21 one thing. You will have to depend upon Patrick Darge.

22 I am going to pose a question for you at the end of
23 this case. If Patrick Darge, as slick as he is, approached you
24 to buy a watch and he would tell you it was a Rolex, would you
25 pay \$25 for that Rolex? And if your answer was no, how then

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1 can you convict another human being on such testimony as that.

2 Thank you.

3 THE COURT: Thank you, Mr. Richman. The government
4 will call its first witness.

5 MR. CAPONE: Your Honor, the government calls Police
6 Officer Joseph Szaniszlo.

7 JOSEPH SZANISZLO,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CAPONE:

12 Q. Good afternoon, Officer Szaniszlo.

13 A. Good afternoon, counselor.

14 Q. How are you employed?

15 A. I'm employed with the New York City Police Department.

16 Q. What is your title?

17 A. My title is police officer and I'm an auditor.

18 Q. How long have you been a police officer for the New York
19 City Police Department?

20 A. Just over 16 and a half years.

21 Q. And where are you currently assigned?

22 A. Currently assigned to the data integrity unit right here in
23 police headquarters, Manhattan.

24 Q. What is the data integrity unit?

25 A. What we do is, we field calls from outside commands

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Szaniszlo - direct

1 throughout the city to make sure that we can accurately record
2 the crimes as they happen, and we also monitor and take random
3 samples of all complaint reports and complaint follow-up
4 reports to make sure that they include weapons, if there was
5 any statements, evidence, et cetera.

6 Q. Were you working for the NYPD in 2000?

7 A. I was.

8 Q. Where did you work in 2000?

9 A. At the time I was assigned to 52nd Precinct in the Bronx.

10 Q. That was not the data integrity unit?

11 A. No. That was a prior command.

12 Q. When you worked in the 52nd precinct in 2000, what was your
13 title?

14 A. I was police officer assigned to patrol.

15 Q. What do you mean by patrol?

16 A. We were just answering 911 calls in marked patrol cars.

17 Q. What area does the 52th Precinct cover?

18 A. It would be a north central Bronx part of the borough.

19 Q. Now, I would like to direct your attention to February 22
20 of 2000.

21 Were you working that day?

22 A. I was.

23 Q. Did you participate in a homicide investigation that day?

24 A. I did respond to one, yes.

25 Q. How did you come to participate in that investigation?

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Szaniszlo - direct

1 A. Well, that day was pretty typical day on patrol. My
2 partner and I were, the first half of the day we had come
3 off --

4 THE COURT: The question is, how did you come to
5 respond?

6 THE WITNESS: It was a radio run of, I believe it was
7 shots fired at the address was 3235 Parkside Place.

8 THE COURT: What's a radio run?

9 THE WITNESS: It came over 911 and a dispatcher
10 contacted us over the air. She was raising us. We were sector
11 Michael.

12 THE COURT: So dispatcher called you directly?

13 THE WITNESS: Yes.

14 THE COURT: Go ahead.

15 Q. And you may have said this already, but did the dispatcher
16 tell you where the shots were reported fired?

17 A. It came over as shots fired in the lobby of that address.

18 Q. What was the address again?

19 A. 3235 Parkside Place.

20 Q. Now, when you received that radio run, how far were you
21 from 3235 Parkside Place?

22 A. Well, we had just come off our meal break, so we were about
23 four to five blocks away at the time. We were really close to
24 the precinct. We had just gotten in our car.

25 Q. Were you familiar with that building?

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Szaniszlo - direct

1 A. Yes. I had been there in the past and in the vicinity.
2 That's the sector we patrol usually.

3 THE COURT: What are the nearby streets?

4 THE WITNESS: You have Webster Avenue passes by,
5 parallels with Parkside Place, 209th Street, 210th Street.
6 There is a school in the area.

7 Q. Who, if anyone, was in the car with you that day when you
8 received the radio run?

9 A. Yes. That would be Officer Paul Dronzek.

10 Q. How long did it take for you and Officer Dronzek to respond
11 to the scene?

12 A. We were there fairly quickly. I would say four minutes
13 about.

14 Q. You don't have any idea about how much time had elapsed
15 between the time that crime had taken place in the lobby and
16 the time you arrived?

17 A. If I remember correctly, it was about 2:20 when we had
18 arrived there, and I believe the radio run, we received it
19 about four minutes prior to that, about 2:16 in the afternoon,
20 and we were there fairly quickly.

21 Q. You don't know when the crime was actually committed before
22 that?

23 A. No. All I can say is when we first heard it come over the
24 radio, it was about 2:16 in the afternoon.

25 Q. Were you and Officer Dronzek the first to arrive at the

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Szaniszlo - direct

1 scene?

2 A. Yes, we were.

3 Q. Can you please describe how you approached the building?

4 A. Sure. We knew from prior patrolling in the area where the
5 building was located, and that street is a one-way facing
6 south. And we actually came up the wrong way on the one-way.
7 We had turned our lights and sirens off so as to not alert the
8 perps that we were getting close by, if they were still there.
9 We didn't know until we would get there and find out. We came
10 up the wrong way on a one-way street. We stopped our patrol
11 car just to, I guess, the south, it would be, of the courtyard
12 and the entryway to the building. And as we got out of the car
13 we were scanning, visually scanning the area. We had our guns
14 drawn. We had to find out was this a founded radio run or --
15 until we could confirm what it was, we had to have our guns out
16 for our safety. It deemed it was required at least for safety
17 sake at that time.

18 Q. So what happened next?

19 A. As we -- as I said, we did a visual scan of the area. We
20 made our way to the lobby. The courtyard has a setback from
21 the sidewalk. The entrance has an inner and outer vestibule
22 door. And we didn't see anybody to the north of the building.
23 We didn't see anybody across the street. We didn't see anybody
24 in the courtyard. So we made our way to the entry at that
25 time.

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Szaniszlo - direct

1 Q. Did you enter the building?

2 A. Yes, we did. We entered the outer doors and the inner
3 doors, there was glass. We could see what appeared to be two
4 victims laying face down from the inner lobby door.

5 Q. This is before you entered the inner doors?

6 A. Yes. We went through the outer doors and there was a
7 vestibule where they have the buzzers for people to buzz to get
8 in the building.

9 THE COURT: So the victims were lying in the place
10 where the buzzers were?

11 THE WITNESS: No, your Honor. They would be actually,
12 we could see through the inner lobby doors to the lobby where
13 they were lying face down next to a staircase inside the lobby.
14 We were able to see that through the glass doors from the inner
15 lobby doors.

16 Q. Did you enter the inner doors?

17 A. Yes, we did.

18 Q. Do you remember if they were locked or how you got in?

19 A. I don't recall having difficulty getting in. I don't think
20 we had to buzz, but I don't recall difficulty. The lock may
21 have been just broken. We just pushed the doors and they
22 opened to gain entry.

23 Q. Describe what happened when you went inside the lobby.

24 A. Sure. As soon as we walked in, we both had our guns drawn,
25 as I said, and we were looking to the left and to the right.

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Szaniszlo - direct

1 It was a wide lobby. It wasn't very deep, but it was a wide
2 lobby. To the left and to the right there could be somebody
3 hiding there. We looked both to the left and to the right. We
4 didn't see anybody. We saw the two victims. We made our way
5 over to them. They didn't appear to be moving, but you could
6 see there was a growing pool of blood around the victims at the
7 foot of the stairs where they had fallen.

8 Q. Where in the lobby were the victims?

9 A. As you come in the entryway, there is an elevator door
10 that's just off center, straight on, and a staircase to the
11 left of that as you look inside. They were at the foot of the
12 stairs to the left of the elevator door.

13 Q. How about in relation to each other, the two bodies, were
14 they near each door, far from each other?

15 A. They were pretty much against each other. Their feet were
16 apart, but their upper torsos were touching. Their feet were
17 spread apart, though.

18 Q. Did you do anything with the bodies?

19 A. Well, we had actually been answering the radio and coming
20 over and telling them that we had two confirmed males shot, and
21 my partner and I were asking for an ambulance, EMS to rush to
22 come to the scene. And I remember touching the neck of one of
23 the victims to see if I could find a pulse, and there was a lot
24 of blood on their upper bodies and I didn't feel any pulse on
25 the one victim that I touched, and neither were moving.

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Szaniszlo - direct

1 Q. Aside from the crime scene, do you remember what the lobby
2 looked like generally?

3 A. Could you repeat the question?

4 Q. Do you remember what the lobby looked like generally, where
5 things were in --

6 A. Generally I do, yes.

7 Q. What is that?

8 A. They had curved corners. It was rectangular shaped with --
9 as I said, the elevator door, as you entered, was slightly off
10 center to the left. A staircase. There was an alcove under
11 the staircase where there appeared to be mailboxes, I guess,
12 for the building, and there was another apartment on the
13 extreme left. There was an alcove there with at least one
14 apartment there. And there was an apartment on the extreme
15 right, I believe, too.

16 Q. I am going to show you on your computer screen there, I
17 believe it will come up, what has been marked for
18 identification as Government Exhibit 20.

19 Do you recognize what's depicted in that photograph?

20 A. Yes. This is from the sidewalk in front of 3235 Parkside
21 Place. This would be the courtyard looking at the entryway
22 vestibule, the outer door.

23 Q. Do you recognize this to be a fair and accurate
24 representation of the entryway to 3235 Parkside Place as it
25 appeared on February 22, 2000?

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Szaniszlo - direct

1 A. Yes, I would say that is true.

2 MR. CAPONE: Your Honor, I will offer Government
3 Exhibit 20.

4 MR. RICHMAN: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 20 received in evidence)

7 MR. CAPONE: This can be published now for the jury.

8 Q. So it may be obvious, Officer Szaniszlo, can you describe
9 what you see?

10 A. As I said, this is viewed from the sidewalk just as you
11 would enter the actual courtyard to 3235 Parkside Place, and
12 those are the outer vestibule doors to the building.

13 Q. I am going to hand you a little laser pointer that you can
14 use for future photographs.

15 Now I am going to show you what is marked for
16 identification as Government Exhibit 21.

17 Do you recognize what's depicted in this photograph?

18 A. Yes. This is the same location as the other picture but
19 looking to the north, north side of the sidewalk, right in
20 front of the courtyard for 3235 Parkside looking north.

21 Q. Is that a fair and accurate representation of the view from
22 the sidewalk of the building as it appeared on February 22,
23 2000?

24 A. Yes, it is.

25 MR. CAPONE: We offer Exhibit 21.

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Szaniszlo - direct

1 MR. RICHMAN: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 21 received in evidence)

4 THE COURT: Is the building to the left?

5 THE WITNESS: Yes, it is.

6 MR. CAPONE: I ask that that photograph be published.

7 THE COURT: Is the building to the left, 3235?

8 THE WITNESS: Yes, sir, it is.

9 Q. And Officer Szaniszlo, in what direction did you approach
10 the building?

11 A. From -- it would be the opposite direction from where we
12 are looking. This is looking north. We came from the south.
13 This is what we would have saw on the way up to the building,
14 yes.

15 Q. I am now going to show you what is marked for
16 identification as Government Exhibit 24.

17 Do you recognize what's depicted here?

18 A. Yes. That would be the inside of the vestibule, and we are
19 looking at the inner doors, and through the windows of the
20 inner doors you can see the top half on the window on the
21 right. You can see the elevator door.

22 I'll wait for the picture to load.

23 Q. Is that a fair and accurate representation of the inner
24 door area of 3235 Parkside Place --

25 MR. RICHMAN: I have no objection, your Honor.

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Szaniszlo - direct

1 A. That is an accurate description.

2 THE COURT: Received.

3 (Government's Exhibit 24 received in evidence)

4 THE COURT: How many more pictures do you have?

5 MR. CAPONE: One more, your Honor.

6 THE COURT: Okay to receive it, Mr. Richman?

7 MR. RICHMAN: I have seen it.

8 THE COURT: You don't have to authenticate the
9 picture. Just put it up.

10 Q. Officer Szaniszlo, is this the vantage point from which you
11 first saw the bodies?

12 A. A little bit closer, but, yes, that was what we saw when we
13 walked through the outer door. And as we were entering those
14 doors we are looking at, then you can see, as you walk closer
15 through the glass, you can see them, yes.

16 Q. Is that the elevator --

17 A. That is the elevator door that's just off center to the
18 left, with the staircase also to the left of that elevator
19 door, and the victims were at the foot of the staircase to the
20 left of the elevator door.

21 Q. Now I am going to show you and offer Government Exhibit 25.

22 MR. RICHMAN: No objection.

23 THE COURT: You can put it up.

24 (Government's Exhibit 25 received in evidence)

25 Q. Do you recognize what is depicted in this photograph?

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Szaniszlo - direct

1 A. Yes, I do.

2 Q. What is it?

3 A. Those -- that's what we saw. Those are the two male
4 victims that we saw as we entered the location.

5 The cups that you see are covering ballistic evidence,
6 possibly, and that would be bullets, bullet fragments, shell
7 casings. And you can see the mailboxes to the left of the
8 staircase, the little alcove there.

9 Q. Can you point to that with your laser pointer?

10 A. Yes, of course. This would be the alcove with the
11 mailboxes to the left of the staircase, the two victims, and
12 these cups are put there by our crime scene detectives later
13 on, after the fact, for investigation. You can see more over
14 here on the stairs.

15 Q. To be clear, the cups were not there --

16 A. The cups were not there, no. That was put there later.
17 But the images and the positions that the victims were in is
18 what we saw.

19 Q. The victims, when you first saw them, were they in that
20 position?

21 A. Yes. They were touching each other and their feet were
22 apart, yeah.

23 Q. Were there any other people in the lobby when you arrived?

24 A. When we arrived, there was someone that did come out. I
25 believe it was somebody on the left side. And not -- within a

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Szaniszlo - direct

1 minute I'd say of us getting there. And once we saw that they
2 were no threat, they didn't appear to have a firearm, they
3 looked shocked and surprised, we just told them, did you see
4 anything and just stay back. Go back inside. We had to make
5 sure it was safe. We didn't know if they were still up on the
6 next landing, whether somewhere in the building. We just
7 wanted everybody out of harm's way as well. We didn't want the
8 crime scene contaminated any further.

9 Q. Did that person come from an apartment?

10 A. As I said, to the left out of this picture, but over here,
11 there was another alcove similar to this with apartments, and
12 that's, I believe, where the person had come out. But it's
13 been a while. I believe it was to the left side. I know
14 someone did come out and we just said, you know -- I remember
15 saying, myself and my partner saying, did you see anything?
16 Did you see what happened? And they were just like shocked.
17 And we told them go back inside, stay inside. Just don't come
18 out.

19 Q. You also said that you called for an ambulance?

20 A. Yes.

21 Q. Did one come?

22 A. Yes. They were there fairly quickly, I would say within a
23 minute or two of us getting there, because they probably had
24 heard it over their radio. They share radio bands with us.
25 And when they heard the initial shots fired, and especially

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Szaniszlo - direct

1 once we confirmed that they were probably nearby, they were
2 there fairly quickly, I would say within one or two minutes.

3 Q. What happened when the ambulance arrived?

4 A. They came inside and we ushered them over. We held open
5 the lobby doors, make sure they could get in quickly, pointed
6 where they were. And they examined the bodies, but they pretty
7 much said that they were gone, that there was nothing they
8 could do for them.

9 Q. Did anyone else arrive at the scene?

10 A. Yeah. Multiple people arrived at the scene. We had the
11 patrol supervisor, Sergeant Rosado, who was working, he
12 arrived; Lieutenant Pagano, from the precinct, he was the
13 platoon commander. He arrived. In no particular order, but
14 Inspector McGrath, who was the commanding officer of the 52th
15 Precinct, precinct detectives came. Touhy was one that I
16 remember, Detective Touhy, and later on like Bronx homicide
17 detectives, I believe, came. It got pretty crowded there in
18 like 15 minutes or so.

19 Q. What is the role of those detectives?

20 A. All of those detectives' roles are to canvass, I guess, the
21 apartment to see if anybody -- we did have 911 operator said
22 that there was a call from an apartment inside the building.
23 So they would be interviewing those occupants that called what
24 they heard, what they saw, knocking on other doors, if anybody
25 else saw or heard anything, trying to get a time frame or time

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Szaniszlo - direct

1 span exactly when the crime happened and, if anything, what
2 they saw. Got a description.

3 Because we did not have a description of the perps.
4 We had been asked by our dispatcher over the radio, do you have
5 a description? Do you have a direction of flight? And we had
6 seen nobody when we pulled up. They had already gone, whether
7 they had left through the front or somewhere else, but we
8 didn't have a description.

9 Q. And did crime scene detectives arrive at the scene?

10 A. Yes, they also did show up on the scene. And they laid
11 these cups out later on. They also were in charge of
12 photographing and taking samples. There was bullet fragments
13 that were also in the walls, I believe, over here. There were
14 bullet fragments recovered. There may have been some here.
15 There was scattered shell casings, as I said. You can see
16 little bits of plaster, I guess, over here. I remember bits of
17 plaster being knocked out. Some of it is over here as well.
18 So the crime scene detectives were going to package all of that
19 and photograph the scene.

20 Q. How about you. Once the other detectives arrived on the
21 scene, did you have a role going forward?

22 A. What we basically did is we kind of stepped back into the
23 foreground and just protected the scene. We made sure nobody
24 came in from the outside. We made sure nobody came down the
25 stairs and walked into the middle of this. We had just had it

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Szaniszlo - direct

1 protected as it was being investigated so nobody would stumble
2 through it. We don't need any additional person that would
3 disrupt the scene. We had to try to freeze it just as it
4 happened so it could be investigated later on and nothing would
5 contaminate the scene.

6 We basically just stood in the background. If anybody
7 was walking in from the outside, what apartment do you live in?
8 We tried to assist in the investigation and we had to stay,
9 obviously. This was in the afternoon on a school day, so there
10 were people that tried to say, I have to go pick up my kid from
11 school, or they were trying to come back into the building. We
12 had to keep those people from coming in and out, unfortunately.
13 They had to leave the building through another way, maybe a
14 basement or something.

15 Q. Did you play any role in recovering evidence?

16 A. I did. I played a role in vouchering several -- there were
17 several vouchers I prepared later on in the day.

18 Q. What are vouchers, by the way?

19 A. Vouchers are when evidence was collected and it was handed
20 to me later on, we package that up and we have to type a
21 voucher. It's basically a report with a victim's name, my
22 name, the vouchering officer, the security envelope's number is
23 recorded on there. And that keeps a trail of what is listed
24 and it's in a clear envelope, unless it contains blood or
25 biohazards. Then it goes in brown paper bags because the

D2JMFER3

Szaniszlo - direct

1 plastic will reactivate the blood, the fluid. And it's just
2 for investigation later that we can keep it free from getting
3 contaminated. It can be handled and looked at through the
4 plastic, and it's kept by the property clerk for later on for
5 investigation purposes and later on for trial, if there is any.

6 Q. Do you remember what type of evidence you vouchered that
7 day?

8 A. Yes. There were many items. There was ballistic evidence,
9 bullet, bullet casings, bullet fragments. There were -- there
10 was decedent's property from each of the victims such as
11 jewelry. There was a watch, a ring, cell phone, credit cards,
12 hotel passkeys. There was some currency, some U.S. currency.
13 I think I said credit cards. Some blood, serological evidence,
14 DNA evidence to see what victim it came from. Probably a third
15 person, that maybe one of the perpetrators left blood behind.

16 Q. I am going to hand you what is marked as Government Exhibit
17 62.

18 Do you recognize what that is?

19 A. I do.

20 Q. What is it?

21 A. This is an envelope containing ballistic evidence that was
22 recovered by crime scene detectives that day at the scene.

23 Q. What's ballistic evidence?

24 A. Ballistic evidence would be shell casings. When a bullet
25 is fired from a gun, there is brass that's left. And if it's

D2JMFER3

Szaniszlo - direct

1 fired from either an automatic or a semiautomatic, that brass
2 is ejected. That was what was under some of those cups that
3 you saw in the previous pictures. So there would be bullet
4 fragments. If it hit a wall, it didn't hit a victim, it would
5 be deformed, the led. That was vouchered if they were able to
6 recover that, which they did. They recovered some. We had
7 bullet casings, bullet fragments, and that's what's basically
8 inside this envelope here.

9 Q. How do you know that the bullets and bullet fragments and
10 shell casings in that envelope are the same ones that were
11 recovered from the scene on February 22, 2000?

12 A. Well, this has my name, it has voucher number on here. And
13 we had viewed this a couple of weeks prior with you and your
14 assistants in the office.

15 Q. Did it correspond to the voucher number you filled out --

16 A. It did, yes.

17 MR. CAPONE: Your Honor, I'll offer Government Exhibit
18 62.

19 MR. RICHMAN: No objection.

20 THE COURT: Received.

21 (Government's Exhibit 62 received in evidence)

22 Q. I am going to show you one more exhibit. This is what has
23 been marked as Government Exhibit 68A.

24 Do you recognize that?

25 A. I do.

D2JMFER3

Szaniszlo - direct

1 Q. And what is it?

2 A. This -- well, it could be one of several things. It's
3 marked biohazard. It's in a brown bag, so it had blood on it.
4 That's why we separate these items. This could be either
5 currency or the hotel passkeys because there was blood on a
6 good bit of the victim's property. I would have to see the
7 corresponding voucher that would list what it is for 864,
8 invoice 864.

9 MR. RICHMAN: No objection. I have no objection.

10 THE COURT: Received.

11 (Government's Exhibit 68A received in evidence)

12 Q. Would something refresh your recollection as to what's
13 inside?

14 A. Yes. If you have voucher number 864, I believe it would.
15 It would probably describe exactly what this is. Yes. It
16 states that these are the hotel passkey cards in a yellow
17 envelope, which is what we have here. And the security
18 envelope number matches.

19 Q. Do you know who they were recovered from?

20 A. It says here that I typed --

21 THE COURT: No. Do you know?

22 Q. Do you remember where they were recovered from?

23 A. This was on one of the victims and these were recovered by
24 the medical examiner. The medical examiner is the one that
25 removed the decedent's property.

D2JMFER3

Szaniszlo - direct

1 Q. Did you play any role in identifying the victims?

2 A. We looked through all of the property that they had,
3 wallet, and we had to get tentative identifications by the
4 names of what was in there. I believe only one of the victims
5 had a passport on him which contains a photo. So the second
6 victim would have been a tentative ID based on the names that
7 was there. Not everybody carries their ID or they may have
8 someone else's ID. So they were tentative IDs.

9 Q. Do you remember who you identified the victims as that day?

10 A. I remember the names that we got.

11 Q. What were the names?

12 A. One was Jose Gonzalez and the other one was Ildefonso
13 Vivero-Flores, I believe.

14 Q. Do you independently have any knowledge as to whether those
15 were the individuals' real names?

16 A. No, I don't.

17 Q. Were the bodies at some point removed from the scene?

18 A. Yes, they were.

19 Q. Did you see them being removed?

20 A. Yes. We were there. My partner and I were there to secure
21 the scene. And at a later time, probably about four hours
22 later, they were removed by representatives of the medical
23 examiner's office.

24 Q. When did your shift end that day?

25 A. My shift ended about an hour after it happened, but I

D2JMFER3

Szaniszlo - direct

1 stayed. It was around the clock until about 8:00 the next
2 morning.

3 Q. After 8:00 the next morning, did you have any further role
4 in the investigation?

5 A. No. I believe all we had done was all the assorted
6 paperwork and that was it.

7 MR. CAPONE: Your Honor, if I could have one second.

8 No further questions, your Honor.

9 THE COURT: Mr. Richman.

10 CROSS-EXAMINATION

11 BY MR. RICHMAN:

12 Q. Good afternoon, Officer.

13 A. Good afternoon.

14 Q. You and I have never spoken about this case, have we, sir?

15 A. No, we have not.

16 Q. Now, when you first got the radio run, you said it was
17 about 2:20 in the afternoon, is that correct?

18 A. Actually, it was about 2:16 in the afternoon. We arrived
19 at 2:20.

20 Q. And you said you were coming off a mid-afternoon meal, is
21 that right?

22 A. That's correct.

23 Q. Where was that meal at?

24 A. That was at the 52th Precinct station house.

25 Q. That's on Webster Avenue, is it not?

D2JMFER3

Szaniszlo - cross

1 A. Yes, it is.

2 Q. That's about half a dozen blocks or so from Park Place?

3 A. That would be fair to say, yes.

4 Q. When you came up, you came against the traffic without your
5 sirens, just in case anybody was leaving and would not have
6 noticed or heard from the police, is that right?

7 A. We extinguished our sirens and lights as we entered the
8 block on 3235.

9 Q. What kind of day was it weather wise?

10 A. It was a sunny day.

11 Q. Who cool, cold?

12 A. I don't remember it being particularly cold or warm. I
13 think it was probably seasonable.

14 Q. That was about exactly 13 years ago this very week, is that
15 right?

16 A. Very close to it, yes.

17 Q. Now, when you arrived, in what position in your car? Were
18 you the driver or recorder?

19 A. I was the recorder.

20 Q. Can you tell the jury what it means to be a recorder?

21 A. A recorder is -- we call it a recorder because you are
22 either driving or you're a recorder. You're the operator or
23 the recorder. The recorder generally answers the radio if you
24 are called or puts over anything if you are making a stop.

25 Let's say somebody runs a red light.

D2JMFER3

Szaniszlo - cross

1 You're also responsible for taking the paperwork for
2 any of the jobs you respond to. That was my role that day. I
3 was the recorder.

4 (Continued on next page)

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D2j0fer4

Joseph Szaniszlo

1 Q. And, in fact, you did take notes that day in your memo
2 book.

3 A. I did, yes.

4 Q. And you're required to maintain that memo book?

5 A. Yes.

6 Q. And you did maintain it; correct, sir?

7 A. Yes, I did.

8 Q. Now, once you arrived at the scene and observed what you
9 had on your hands, you were there to preserve the integrity;
10 were you not?

11 A. Yes.

12 Q. And you wanted to make sure that scene, that crime scene,
13 remained untouched of any evidence that would remain there?

14 A. To the best of our abilities, yes, while still trying to
15 see if we could render any aid or help to the victims.

16 Q. And, in fact, in government's 21 in evidence --

17 MR. RICHMAN: Could I have that put up, too.

18 Q. Was it you who put the yellow tape around?

19 A. I don't believe I did, no. We were inside the lobby trying
20 to maintain the integrity of the initial scene anywhere the
21 victims were.

22 Q. That's the real purpose, is to maintain that nothing is
23 messed with, so to say; right?

24 A. That would be correct, yeah. That tape was put up by other
25 people that arrived. As you can see up on the corner -- could

D2j0fer4

Joseph Szaniszlo

1 I use the pointer?

2 Q. Sure.

3 A. As you can see, up here, that's the front of the patrol
4 car. And these are several officers over here, in addition to
5 one over here in uniform. And other units were probably
6 directed by the parole supervisor to put up this tape, just to
7 slow down anybody that might turn the corner, let's say by
8 accident, and walk into something like that. This would get
9 their attention. And, then, if they had managed to get by an
10 officer, let's say it would slow them down from coming in and
11 examining the scene. That's why that tape was put up there, to
12 keep people out, basically.

13 Q. Was the street blocked?

14 A. Not when we had gotten there, no. At a later time, it may
15 have been; yeah, I believe it was.

16 Q. Now, you at one point made efforts to collect evidence,
17 correct?

18 A. I did not collect evidence at the scene. A lot of the
19 evidence that was collected was collected by crime scene
20 detectives and the medical examiner. They, in turn, would hand
21 this to me. They would say who was the vouchering officer,
22 that would be me. I would raise my hand. And they would say
23 stay close by, you know, so you wouldn't have to go look.
24 There is a lot of work here at the time. This was a mess.

25 Q. And vouchering officer is the first officer on scene,

D2j0fer4

Joseph Szaniszlo

1 right?

2 A. Not necessarily. In this instance, I was, yeah.

3 Q. So there was lots of things to pick up, you picked up, I
4 believe, shell casings?

5 A. As I said, crime scene would have done that. But that was
6 their role. And they would have then handed it to me once it
7 was packaged.

8 Q. And the bullets?

9 A. That was among some of the evidence.

10 Q. Cell phones?

11 A. Yes, that was prisoner -- or I keep saying prisoner,
12 forgive me. That would be decedent's property; yes.

13 Q. And there is a lot of blood there, correct?

14 A. On the ground and on the victims, yes. And on some of the
15 property.

16 Q. And did you notice any step prints, footprints in the
17 blood?

18 A. I did not, no. I thought we did a good job of keeping
19 people from stepping in that, yeah.

20 Q. And there also came a time, did there not, the other
21 persons were there, like witnesses or persons were questioned.

22 A. I did observe detectives questioning people, yeah.

23 Q. Now, you prepared the vouchers, is that right?

24 A. I prepared most of the vouchers. There was -- there was an
25 additional -- there were -- Officer Dropzig, my partner, he

D2j0fer4

Joseph Szaniszlo

1 also prepared vouchers, but I was on the majority of them.

2 Q. And the vouchers included all of those things that were
3 recovered from the scene?

4 A. From the scene and from the victims; yes.

5 Q. And for the purpose of identification, would you take a
6 look at these. And are these your vouchers, the ones that you
7 prepared?

8 MR. CAPONE: If I could find out what the witness
9 is --

10 MR. RICHMAN: All vouchers 3500.

11 MR. CAPONE: -- looking at.

12 A. These vouchers that you have handed me do contain mine and
13 Officer Dropzig's as well.

14 Q. As part of your work, you also prepared a report; did you
15 not?

16 A. A complaint report, yes.

17 Q. And you make reference -- is this the complaint report you
18 prepared?

19 A. Yes. This is the computer-generated version of the report
20 that I prepared roughly on the scene. This is the computer
21 generated version, uh-huh.

22 Q. Would you take a look at that? Makes reference to
23 perpetrator one, is that correct?

24 A. That's what it says; yes.

25 Q. Did you mark that in there?

D2j0fer4

Joseph Szaniszlo

1 A. I don't recall, but we recorded it as best we could. And I
2 guess I very possibly did, but I don't recall actually putting
3 that one.

4 Q. You indicated there was one perpetrator?

5 A. That's what it says here, yes.

6 Q. And you prepared that report, sir?

7 A. Yes.

8 MR. RICHMAN: May I have a moment, your Honor?

9 BY MR. RICHMAN:

10 Q. By the way, did you notice whether or not there were any
11 cameras in the hallway?

12 A. I did not observe any, no.

13 MR. RICHMAN: I have no further questions, thank you.

14 THE COURT: Redirect?

15 THE WITNESS: Your Honor, may I add something?

16 THE COURT: No.

17 REDIRECT EXAMINATION

18 BY MR. CAPONE:

19 Q. Officer, you were shown a document that is labeled 3505-C;
20 do you see that?

21 A. Could you repeat the number?

22 Q. 3505-C, in the bottom right-hand corner?

23 A. I do see it, yes. I have it in my hand.

24 Q. And what is that again?

25 A. This is a computer-generated version of what we call "the

D2j0fer4

Szaniszlo - redirect

1 scratch." The scratch is something that we take in rough hand,
2 pen, on the scene.

3 Q. And you see there are details that were filled out?

4 A. The details?

5 Q. Yeah.

6 A. Yes. And in that details, it does say unknown person or
7 perps.

8 Q. Person or perps?

9 A. Person or perps. I put an "S" in there in the type,
10 because it was unknown how many there were.

11 Q. Did you, that day, have any knowledge as to how many
12 shooters there were?

13 A. No, I did not.

14 Q. Did you play any role in the investigation after that?

15 A. After preparing --

16 Q. After the following morning.

17 A. No, I did not.

18 MR. CAPONE: I have no further questions.

19 THE COURT: Could I see that? I wonder, counsel, if
20 this document should not be put into evidence because of the --

21 MR. RICHMAN: I would offer it as such, your Honor.

22 MR. CAPONE: I mean, your Honor, I think it's hearsay.
23 He is here to testify.

24 THE COURT: I think it explains his testimony. There
25 is nothing that is harmful to either side by this document, and

D2j0fer4

Szaniszlo - redirect

1 I would like the jury to see the two items that were discussed.

2 MR. CAPONE: Your Honor, if I could just then ask a
3 couple of more questions about it, if it's gonna be in
4 evidence.

5 THE COURT: Let's do that.

6 MR. CAPONE: Okay. Let's put this into evidence as
7 the next government exhibit.

8 THE COURT: Doesn't make any difference in front of
9 the jury who offers the document, whether it is defense or
10 government. What counts is what's inside. 3505-C.

11 MR. CAPONE: We can call it 3505-C, if your Honor --

12 THE COURT: Call it 3505-C.

13 And members of the jury, there is a box midway down,
14 which you can't see from there. But it's -- just so you see
15 the document. The whole document is a complaint report. And
16 it says: Total number of perpetrators. And the next box says:
17 Wanted, one. Arrested, zero. And at the bottom, under
18 details, the document says: At TPO.

19 What does that mean?

20 THE WITNESS: At the time and place of occurrence.
21 That's an abbreviation.

22 THE COURT: Above victim was found face down in lobby,
23 DOA. Which means?

24 THE WITNESS: Dead on arrival.

25 Dead on arrival of apparent gunshots. Unknown person

D2j0fer4

Szaniszlo - redirect

1 (S) fled in unknown direction. Above reporter called 9/11 from
2 his parents' apartment "L" inside 3235 Parkside Place. And
3 then there is other information.

4 Anything else that anybody else wants to add?

5 MR. RICHMAN: No, your Honor, I'm fine.

6 THE COURT: Mr. Capone?

7 MR. CAPONE: Yes, just a couple of questions.

8 BY MR. CAPONE:

9 Q. Officer Szaniszlo, you didn't fill out this particular
10 version, is that right?

11 A. No. This, once this complaint report number is received at
12 the precinct, we can -- and the information is typed in
13 manually into the computer. Then you can print out a
14 computer-generated copy. And that is often preferred, because
15 handwriting can be so atrocious on the scenes that at least it
16 could be read by anybody that picks up the report.

17 Q. At what point do you fill out your hand-written version?

18 A. That's usually done on the scene. We carry scratch
19 complaint reports, blanks. And we fill in the required
20 information at the scene. And later on, when we go back to the
21 precinct, we input that into the computer. And that's where we
22 actually generated our report number. And we can print out a
23 hard copy then of a computer-generated report.

24 Q. What type of information did you have when you printed this
25 report out?

D2j0fer4

Szaniszlo - redirect

1 A. Well, I had tentative IDs of Mr. Flores which is listed
2 here. The times in the upper portions of the report; the time
3 of the call; the date; the day of the week; and the address of
4 the occurrence, which is listed as 3235 Parkside Place.

5 Q. Did you have any information about how many shooters there
6 were?

7 A. We did not know at the time.

8 Q. I'm showing you another document -- two other documents I'm
9 showing you.

10 First is 3505-D; do you see that?

11 A. Yes, I do.

12 Q. And what is that?

13 A. This is an additional complaint report for the second
14 victim.

15 Q. The first one was for one of the victims, and this one was
16 for the second?

17 A. Yes. Yes. NYPD protocol dictates that each victim of a
18 homicides gets their own complaint number. So we have 2154 and
19 2155, one for each.

20 Q. What is 35 -- what does it say about the number of
21 perpetrators on this form?

22 A. It also says total number of perpetrators wanted is one,
23 arrested zero. And in the details it says: Perp, with an "S"
24 in parentheses that I typed in, because it was unknown whether
25 there were more than one. There was at least one, but we

D2j0fer4

Szaniszlo - redirect

1 didn't know how many.

2 MR. CAPONE: And, your Honor, I'll offer 3505-E as an
3 exhibit.

4 MR. RICHMAN: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 3505-E received in evidence)

7 THE COURT: I think we have hit this enough.

8 MR. CAPONE: And the next document is --

9 Q. Well, can you identify 3505-E?

10 A. 3505-E would be a photocopy of, as I described, a scratch
11 report that we filled out on the scene.

12 Q. Did you fill that out?

13 A. Yes. That's my handwriting. And I did fill this out and
14 signed it.

15 Q. Is that what the other documents are then based on?

16 A. Yes.

17 MR. CAPONE: Your Honor, I would offer 3505-E.

18 MR. RICHMAN: Objection, your Honor.

19 THE COURT: Let me see it.

20 THE WITNESS: 3505-E. And this is D.

21 THE COURT: Same, isn't it?

22 MR. CAPONE: It's what the other documents were then
23 created. Based on, your Honor.

24 THE COURT: Sustained.

25 MR. CAPONE: No further questions.

D2j0fer4

Szaniszlo - redirect

1 MR. RICHMAN: None, your Honor.

2 THE COURT: You're excused, Officer.

3 Thank you very much.

4 (Witness excused)

5 THE COURT: It's 4:15. And we're gonna break at 4:30.

6 MR. BLANCHE: We have another witness, your Honor, if
7 we're gonna start --

8 THE COURT: But we can't go that far.

9 MR. BLANCHE: Sure.

10 THE COURT: We'll take the witness --

11 MR. BLANCHE: Your Honor, we also need to talk about
12 scheduling.

13 THE COURT: Just a minute sir. Sir? Sir?

14 THE WITNESS: I need a break for a moment, please.

15 THE COURT: I'm going to excuse you.

16 THE WITNESS: May I be excused for a moment, please.

17 THE COURT: You can all be excused.

18 Need to go right now?

19 THE WITNESS: I would like to, your Honor.

20 THE COURT: Go.

21 MR. BLANCHE: Your Honor?

22 THE COURT: Is this for the record or sidebar?

23 MR. BLANCHE: Scheduling issue. If we could talk at
24 sidebar for one moment, your Honor.

25 THE COURT: I'll dismiss the jury first, and then

D2j0fer4

Szaniszlo - redirect

1 we'll -- I need to dismiss you all at once, so we we'll --

2 THE DEPUTY CLERK: Are they coming?

3 THE COURT: I have to dismiss them all at once. He is
4 gonna come back.

5 MR. BLANCHE: Your Honor, the scheduling issue.

6 THE COURT: We can't do anything until there is a full
7 jury or I dismiss the jury, so just step back.

8 MR. BLANCHE: Yes, your Honor.

9 THE COURT: Members of the jury, we are finished for
10 today. Close up your books, give them to Ms. Jones on the way
11 out.

12 Don't discuss the testimony, keep an open mind. See
13 you tomorrow at 10:00.

14 THE DEPUTY CLERK: Judge? Judge? You may want to --

15 MR. RICHMAN: Voir dire in morning, sir, if you
16 recall.

17 THE COURT: I do recall, now.

18 So we should start 10:30.

19 MR. RICHMAN: Yes, sir.

20 THE COURT: 10:30 a.m. tomorrow morning, members of
21 the jury.

22 (Jury excused)

23 THE COURT: If this is something personal, I'll take
24 the juror alone.

25 MR. RICHMAN: Fine.

D2j0fer4

Szaniszlo - redirect

1 MR. BLANCHE: Fine.

2 (Sidebar with the Court and the juror)

3 THE COURT: Be seated. See you tomorrow at 10:30.

4 (Adjourned until Wednesday, February 20, 2013 at 10:00
5 a.m.)

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